February 1, 2002

SENATE BILL No. 77

DIGEST OF SB 77 (Updated January 30, 2002 5:44 PM - DI 105)

Citations Affected: IC 29-1; IC 30-2; IC 30-4; IC 34-30; noncode.

Synopsis: Uniform principal and income act. Adopts the Uniform Principal and Income Act. Provides notice requirements for proposed actions of a trustee. Provides that a trustee or beneficiary may petition a court for modification or denial of a proposed action. Creates an abuse of discretion standard for overturning a fiduciary's use of discretionary power. Removes a provision that prevents the trustee from making an adjustment if the trustee is not a beneficiary but the adjustment would affect the trustee directly or indirectly. Provides civil immunity for a trustee in certain circumstances. Specifies that if an obligation to pay money to the trustee is held as an asset of a charitable remainder trust, what is distributable as income is an increase in the value of an obligation to pay money to the trustee over the value of the obligation at the time it was acquired by the trust. Specifies that if a private or commercial deferred annuity is held as an asset of a charitable remainder trust, what is distributable as income is an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust. Amends the definition of "principal" to include property that remains perpetually vested in the trustee in addition to property held for distribution to a remainder beneficiary when the trust terminates. In a provision concerning deferred compensation, annuities, and similar payments: (1) amends the definition of "payment" to specify that the trustee may have the option to receive the payment in lump sum or some other form; (2)

(Continued next page)

Effective: January 1, 2003.

Simpson, Zakas

January 7, 2002, read first time and referred to Committee on Judiciary.
January 31, 2002, amended, reported favorably — Do Pass.

amends a provision concerning allocating more of a payment to income in order to obtain an estate tax marital deduction to include obtaining a gift tax marital deduction; and (3) adds a provision concerning allocating a payment between income and principal if a payment is not characterized as interest or a dividend, and if the payment is made from an individual account corresponding to an original participant. Amends a provision concerning the trustee's power to adjust between income and principal to make the consideration of some factors in exercising the power discretionary instead of mandatory. Repeals trust code statutes that are superseded and makes other conforming changes.

February 1, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 77

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-1-7.5-3, AS AMENDED BY P.L.182-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 3. Subject to section 2(d) of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representatives, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or

accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by ~~law;~~ **IC 30-2-14;**

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(i) in the same business form for a period of not more than five (5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporations and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims;

(27) distribute assets of the estate upon such terms as he may impose; and

(28) perform any other act necessary or appropriate to administer the estate.

SECTION 2. IC 30-2-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]:

Chapter 14. Uniform Principal and Income Act

Sec. 1. As used in this chapter, "accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (12) month period that begins when an income interest begins or ends when an income interest ends.

Sec. 2. As used in this chapter, "beneficiary" includes, in the case of:

(1) a decedent's estate, an heir, and a devisee; and

(2) a trust, an income beneficiary, and a remainder beneficiary.

Sec. 3. As used in this chapter, "fiduciary" means a personal representative or a trustee. The term includes an executor, an administrator, a successor personal representative, a special administrator, and a person performing substantially the same function.

Sec. 4. As used in this chapter, "income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided

in sections 21 through 35 of this chapter.

Sec. 5. As used in this chapter, "income beneficiary" means a person to whom net income of a trust is or may be payable.

Sec. 6. As used in this chapter, "income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

Sec. 7. As used in this chapter, "mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

Sec. 8. As used in this chapter, "net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

Sec. 9. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

Sec. 10. As used in this chapter, "principal" means property that is held in trust for distribution to a remainder beneficiary when the trust terminates or that will remain perpetually vested in the trustee.

Sec. 11. As used in this chapter, "remainder beneficiary" means a person entitled to receive principal when an income interest ends.

Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

Sec. 13. As used in this chapter, "trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Sec. 14. (a) The following applies to a fiduciary in allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the

exercise of the power produces a result different from a result required or permitted by this chapter. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust or an estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 15 of this chapter or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or an estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

Sec. 15. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if:

(1) the trustee invests and manages trust assets as a prudent investor;

(2) the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income; and

(3) the trustee determines:

(A) after applying the rules in section 14(a) of this chapter; and

(B) considering any power the trustee may have under the trust or the will to invade principal or accumulate income;

that the trustee is unable to comply with section 14(b) of this chapter.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider, but is not limited to, any of the following:

(1) The nature, purpose, and expected duration of the trust.

(2) The intent of the settlor.

(3) The identity and circumstances of the beneficiaries.

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital.

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.

(6) The net amount allocated to income under this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an

adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(7) if the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (c)(6), or (c)(7) applies to a trustee and there is more than one (1) trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee:

(1) is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (c)(6); or

(2) determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c).

The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this chapter is intended to create or imply a duty to make an adjustment. A trustee incurs no liability for:

(1) not considering whether to make an adjustment; or

(2) choosing not to make an adjustment.

Sec. 16. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as set forth in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all living beneficiaries who:

(1) are receiving; or

(2) are entitled to receive:

(A) income under the trust; or

(B) a distribution of principal;

if the trust were terminated at the time the notice is given.

If a beneficiary described in this subsection is a minor, the trustee may comply with this subsection by mailing the notice to any court appointed or natural guardian of the minor.

(c) A trustee is not required to give notice of proposed action to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that the notice is given as set forth in this section and shall state all of the following:

(1) The name and mailing address of the trustee.

(2) The name and telephone number of a person who may be contacted for additional information.

(3) A description of the action proposed to be taken and an explanation of the reasons for the action.

(4) The time within which objections to the proposed action may be made, which shall be at least thirty (30) days after the mailing of the notice of proposed action.

(5) The date on or after which the proposed action may be taken or is effective.

(6) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the period specified in the notice of proposed action.

(e) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if:

(1) the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period; and

(2) the other requirements of this section are satisfied.

If a beneficiary not entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(f) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the

proposed action, the trustee shall mail notice to the beneficiaries described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

Sec. 17. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) applies include the following:

(1) A determination under section 15(a) of this chapter of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) In deciding whether and to what extent to exercise the power conferred by section 15(a) of this chapter, a determination of the following:

(A) The factors that are relevant to the trust and the trust's beneficiaries.

(B) The extent to which the factors are relevant.

(C) The weight, if any, to be given to the relevant factors.

(c) If a court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, subject to the following:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute to the beneficiary an amount that the court determines will restore the beneficiaries, in whole or in part, to their appropriate positions.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, in whole or in part, to their appropriate positions by requiring:

(A) the fiduciary to withhold an amount from at least one (1) future distribution to that beneficiary; or

(B) the beneficiary to return some or all of the distribution to the trust.

(3) To the extent the court is unable, after applying subdivisions (1) and (2), to restore the beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court shall require the fiduciary to pay an appropriate amount to:

(A) at least one (1) of the beneficiaries;

(B) the trust; or

(C) entities under both clauses (A) and (B).

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise of a discretionary power by the fiduciary will result in an abuse of the fiduciary's discretion. The petition shall:

(1) describe the proposed exercise or nonexercise of the power;

(2) contain sufficient information to inform the beneficiaries of:

(A) the reasons for the proposal; and

(B) the facts upon which the fiduciary relies; and

(3) contain an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power.

(e) A beneficiary who challenges a fiduciary's proposed decision or actual decision to exercise or not to exercise a discretionary power conferred by this chapter shall have the burden of establishing that it will result or did result in an abuse of discretion.

Sec. 18. After an individual dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 20 through 43 of this chapter that apply to trustees and the rules in subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a

decedent's estate or a terminating income interest under the rules in sections 20 through 43 of this chapter that apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion:

(i) fees of attorneys, accountants, and fiduciaries;

(ii) court costs and other expenses of administration; and

(iii) interest on death taxes;

but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts; funeral expenses; disposition of remains; family allowances; and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subdivision (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the

trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts:

(i) accrued or became due before, on, or after the date of an individual's death; or

(ii) an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Sec. 19. (a) Each beneficiary described in section 18(4) of this chapter is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the

aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Sec. 20. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section 18(1) of this chapter applies to principal if its due date occurs before:

(1) an individual dies in the case of an estate; or

(2) an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which an individual dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which an individual dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 23 of this chapter applies are considered to be due on:

(1) the date fixed by the entity for determining who is entitled to receive the distribution; or

(2) if no date is fixed, the declaration date for the distribution.

A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Sec. 22. (a) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall

prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Sec. 23. (a) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest. The term does not include the following:

(1) A trust or an estate to which section 24 of this chapter applies.

(2) A business or an activity to which section 25 of this chapter applies.

(3) An asset backed security to which section 37 of this chapter applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money.

(2) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(3) Money received in total or partial liquidation of the entity.

(4) Money received from an entity that is:

(A) a regulated investment company; or

(B) a real estate investment trust;

if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by:

(1) the entity's board of directors; or

(2) a person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Sec. 24. A trustee shall allocate to:

(1) income an amount received as a distribution of income; and

(2) principal an amount received as a distribution of principal;

from a trust or an estate in which the trust has an interest other than a purchased interest. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 23 or 37 of this chapter applies to a receipt from the trust.

Sec. 25. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which:

(1) its net cash receipts must be retained for:

(A) working capital;

(B) the acquisition or replacement of fixed assets; and

(C) other reasonably foreseeable needs of the business or activity; and

(2) the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records.

If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional

business activities;
(2) farming;
(3) raising and selling livestock and other animals;
(4) management of rental properties;
(5) extraction of minerals and other natural resources;
(6) timber operations; and
(7) activities to which section 36 of this chapter applies.

Sec. 26. A trustee shall allocate to principal:
(1) to the extent not allocated to income under this chapter, assets received from:
(A) a transferor during the transferor's lifetime;
(B) a decedent's estate;
(C) a trust with a terminating income interest; or
(D) a payer under a contract naming the trust or its trustee as beneficiary;
(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 23 through 37 of this chapter;
(3) amounts recovered from third parties to reimburse the trust because of disbursements described in section 39(a)(7) of this chapter or for other reasons to the extent not based on the loss of income;
(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
(6) other receipts as provided in sections 30 through 37 of this chapter.

Sec. 27. To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Sec. 28. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) Notwithstanding any other provision of this section, when an obligation described in this section is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(d) This section does not apply to an obligation to which section 31, 32, 33, 34, 36, or 37 of this chapter applies.

Sec. 29. (a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 25 of this chapter, loss of profits from a business.

(c) This section does not apply to a contract to which section 31 of this chapter applies.

Sec. 30. If a trustee determines that an allocation between

principal and income required by section 31, 32, 33, 34, or 37 of this chapter is insubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in section 15(c) of this chapter applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 15(d) of this chapter and may be released for the reasons and in the manner described in section 15(e) of this chapter. An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) the value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

Sec. 31. (a) This section does not apply to payments to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the amount in a lump sum or other form of payment. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan.

(c) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(d) If a payment is not characterized as interest or a dividend, and if the payment is made from an individual account corresponding to an original participant, the payment shall be allocated between income and principal by:

(1) determining the income occurring within the individual account by treating the account as though it were a trust; and

(2) considering the income to be distributed as a pro rata portion of all payments made from the individual account

during the year.

(e) If no part of a payment is characterized as interest, a dividend, or allocated under subsection (d), and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(f) Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(g) If, to obtain a gift or estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the deduction.

Sec. 32. (a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include the following:

(1) A payment subject to section 31 of this chapter.
(2) Resources subject to section 33 of this chapter.
(3) Timber subject to section 34 of this chapter.
(4) An activity subject to section 36 of this chapter.
(5) An asset subject to section 37 of this chapter.
(6) Any asset for which the trustee establishes a reserve for depreciation under section 40 of this chapter.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

Sec. 33. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3), ninety percent (90%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent (90%) of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in minerals, water, or other natural resources after December 31, 2002, the trustee shall allocate receipts from the interest as provided in this chapter.

Sec. 34. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products under this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the

timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from:

(A) the lease of timberland; or

(B) a contract to cut timber from land owned by a trust;

by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated under subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after December 31, 2002, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

Sec. 35. (a) If:

(1) a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets; and

(2) the amounts that the trustee transfers from principal to income under section 15 of this chapter and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction;

the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 15(a) of this chapter. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting

period.

Sec. 36. (a) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in:

(1) some or all changes in the price of a tangible or intangible asset or group of assets; or

(2) changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 25 of this chapter for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee:

(1) grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted;

(2) grants an option that permits another person to sell property to the trust; or

(3) acquires an option to buy property for the trust or an option to sell an asset owned by the trust;

and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

Sec. 37. (a) As used in this section, "asset backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 23 or section 31 of this chapter applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one (1) or more payments in exchange for

the trust's entire interest in an asset backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one (1) of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

Sec. 38. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 18(2)(B) or 18(2)(C) of this chapter applies:

(1) one-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) one-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including:

(A) interest;

(B) ordinary repairs;

(C) regularly recurring taxes assessed against principal; and

(D) expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Sec. 39. (a) A trustee shall make the following disbursements from principal:

(1) the remaining one-half (1/2) of the disbursements described in section 38(1) and 38(2) of this chapter;

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in section 38(4) of this chapter of which the trust is the owner and beneficiary;

(6) estate, inheritance, and other transfer taxes, including

penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Sec. 40. (a) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under section 25 of this chapter for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

Sec. 41. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal

because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in section 39(a)(7) of this chapter.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and clause (A).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Sec. 43. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the

fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, a trust, or a beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Sec. 44. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 3. IC 30-4-1-2, AS AMENDED BY P.L.41-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 2. As used in this article:

(1) "Adult" means any person eighteen (18) years of age or older.

(2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary.

(3) "Beneficiary" ~~means any cestui que trust or person named or a member of the class designated in the terms of the trust to be any person or class of persons for whose benefit the title to the trust property is held and for whom the trust is to be administered.~~ **has the meaning set forth in IC 30-2-14-2.**

(4) "Breach of trust" means a violation by the trustee of any duty

which is owed to the settlor or beneficiary.

(5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

(6) "Court" means a court having jurisdiction over trust matters.

(7) **"Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.**

(8) "Income beneficiary" ~~means a beneficiary to whom income is presently payable or for whom it is accumulated for distribution as income.~~ **has the meaning set forth in IC 30-2-14-5.**

~~(8)~~ **(9)** "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

~~(9)~~ **(10)** "Minor" means any person under the age of eighteen (18) years.

~~(10)~~ **(11)** "Person" ~~means a natural person, corporation, or a unit, agency, or other subdivision of national, state, or local government.~~ **has the meaning set forth in IC 30-2-14-9.**

~~(11)~~ **(12)** "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

~~(12)~~ **(14)** "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

~~(13)~~ **(15)** "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

~~(14)~~ **(16)** "Trust estate" means the trust property and the income derived from its use.

~~(15)~~ **(17)** "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

~~(16)~~ **(18)** "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

~~(17)~~ **(19)** "Trustee" ~~means the person who is charged with the responsibility of administering the trust and includes a successor or added trustee.~~ **has the meaning set forth in IC 30-2-14-13.**

SECTION 4. IC 30-4-5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 0.5. The Uniform Principal and Income Act (IC 30-2-14) applies to the administration of a trust under this article.**

SECTION 5. IC 30-4-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 1. ~~(Duty of Trustee as to Receipts and Expenditures)~~ (a) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this article **or IC 30-2-14;**

(2) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of ~~this article;~~ **IC 30-2-14;** or

(3) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion and judgment would act in the management of their own affairs.

(b) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to the provisions of ~~this article.~~ **IC 30-2-14.**

SECTION 6. IC 30-4-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 3. ~~(When Right to Income Arises; Apportionment of Income)~~ (a) An income beneficiary is entitled to income from the date specified in the terms of the trust or, if none is specified, the date an asset ~~is delivered to the trustee.~~ **becomes subject to a trust or successive income interest as determined under IC 30-2-14-20.** Receipts earned or accrued in whole or in part but not received before the date on which the asset ~~is delivered to the trustee~~ **becomes subject to a trust or successive income interest as determined under IC 30-2-14-20** are ~~income.~~ **principal.**

(b) The character attributed to income received during the administration of a decedent's estate shall be the same in the hands of the trustee as it is in the hands of the executor under the applicable probate law.

(c) When an income interest is terminated, the income beneficiary whose interest is terminated, or ~~his~~ **the income beneficiary's** estate, is entitled to **a distribution determined under IC 30-2-14-18.**

~~(1) income undistributed on the date of termination;~~

~~(2) income due but not paid to the trustee on the date of termination;~~

~~(3) income in the form of periodic payments (other than corporate distributions to stockholders), including but not limited to rent, interest, or annuities, not due on the date of termination, accrued from day to day.~~

(d) Corporate distributions to stockholders are to be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

SECTION 7. IC 30-4-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 8. ~~(Disposition of Natural Resources) (a)~~ If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, delay rentals, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as ~~follows:~~

~~(1) If received as rent on a lease or extension payments on a lease, the receipts are income.~~

~~(2) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal all delay rentals and the fraction of the balance of the receipts which the unrecovered cost of the production payments bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.~~

~~(3) If received as a royalty, overriding or limited royalty, or bonus, or from a working interest, net profit interest, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resources were being taken from the land at the time the trust was established. Twenty-seven and one-half percent (27-1/2%) of the gross receipts (but not to exceed fifty percent (50%) of the net receipts computed without allowance for depletion) shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.~~

~~(b) If a trustee, on September 2, 1971, held an item of depletable property of a type specified in this section he may allocate receipts from the property in the manner used before September 2, 1971, but as to all depletable property acquired after September 2, 1971, by an existing or new trust, the method of allocation provided herein shall be used.~~ **provided by IC 30-2-14-33.**

SECTION 8. IC 30-4-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 9. ~~(Timber)~~ If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with ~~30-4-5-1(a)(3).~~ **IC 30-2-14.**

SECTION 9. IC 34-30-2-129.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.5. IC 30-2-14-15 (concerning a trustee's power to adjust trust principal and income).**

SECTION 10. IC 34-30-2-129.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.6. IC 30-2-14-16 (concerning a proposed action by a trustee of a trust).**

SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2003]: IC 30-4-5-2; IC 30-4-5-4; IC 30-4-5-5; IC 30-4-5-6; IC 30-4-5-7; IC 30-4-5-11.

SECTION 12. [EFFECTIVE JANUARY 1, 2003] **IC 30-2-14, as added by this act, applies to every trust or decedent's estate existing on or created after January 1, 2003, except as otherwise expressly provided:**

(1) in the decedent's will;

(2) by the terms of the trust; or

(3) in IC 30-2-14, as added by this act.

SENATE MOTION

Mr. President: I move that Senator Zakas be added as coauthor of Senate Bill 77.

SIMPSON

COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 77, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTIONS 1 through 10 with "[EFFECTIVE JANUARY 1, 2003]".

Page 5, line 20, after "property" insert "**that is**".

Page 5, line 22, after "terminates" insert "**or that will remain perpetually vested in the trustee**".

Page 5, line 33, delete "In" and insert "**The following applies to a fiduciary in**".

Page 5, line 35, delete "of sections 16 through 20".

Page 5, line 35, delete "chapter, a" and insert "**chapter:**".

Page 5, delete line 36.

Page 5, line 37, after "(1)" insert "**A fiduciary**".

Page 5, line 39, delete ";" and insert "**.**".

Page 5, line 40, after "(2)" insert "**A fiduciary**".

Page 6, line 2, delete ";" and insert "**. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.**".

Page 6, line 3, after "(3)" insert "**A fiduciary**".

Page 6, line 6, delete "; and" and insert "**.**".

Page 6, line 7, after "(4)" insert "**A fiduciary**".

Page 6, line 8, after "trust" insert "**or the will**".

Page 6, line 28, delete "," and insert "**:**
(A)".

Page 6, line 29, delete "," and insert "**; and**
(B) considering any power the trustee may have under the trust or the will to invade principal or accumulate income;".

Page 6, line 29, beginning with "that" begin a new line block indented.

Page 6, line 32, delete "shall consider all factors" and insert "**may consider, but is not limited to, any of the following:**".

Page 6, delete lines 33 through 34.

Page 7, line 42, after "adjustment;" insert "**or**".

Page 8, line 1, delete "; or" and insert "**.**".

Page 8, delete lines 2 through 3.

Page 8, line 4, after "(c)(6)," insert "**or**".

Page 8, line 4, delete ", or (c)(8)".
Page 8, line 15, delete "or in subsection (c)(8)".
Page 8, between lines 25 and 26, begin a new paragraph and insert:
"(g) Nothing in this chapter is intended to create or imply a duty to make an adjustment. A trustee incurs no liability for:
(1) not considering whether to make an adjustment; or
(2) choosing not to make an adjustment.
Sec. 16. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as set forth in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.
(b) The trustee shall mail notice of the proposed action to all living beneficiaries who:
(1) are receiving; or
(2) are entitled to receive:
(A) income under the trust; or
(B) a distribution of principal;
if the trust were terminated at the time the notice is given.
If a beneficiary described in this subsection is a minor, the trustee may comply with this subsection by mailing the notice to any court appointed or natural guardian of the minor.
(c) A trustee is not required to give notice of proposed action to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.
(d) The notice of proposed action shall state that the notice is given as set forth in this section and shall state all of the following:
(1) The name and mailing address of the trustee.
(2) The name and telephone number of a person who may be contacted for additional information.
(3) A description of the action proposed to be taken and an explanation of the reasons for the action.
(4) The time within which objections to the proposed action may be made, which shall be at least thirty (30) days after the mailing of the notice of proposed action.
(5) The date on or after which the proposed action may be taken or is effective.
(6) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the period specified in the notice of proposed action.
(e) A trustee is not liable to a beneficiary for an action regarding

a matter governed by this chapter if:

(1) the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period; and

(2) the other requirements of this section are satisfied.

If a beneficiary not entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(f) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall mail notice to the beneficiaries described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

Sec. 17. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) applies include the following:

(1) A determination under section 15(a) of this chapter of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) In deciding whether and to what extent to exercise the power conferred by section 15(a) of this chapter, a determination of the following:

(A) The factors that are relevant to the trust and the trust's beneficiaries.

(B) The extent to which the factors are relevant.

(C) The weight, if any, to be given to the relevant factors.

(c) If a court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, subject to the following:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute to the beneficiary an amount that the court determines will restore the beneficiaries, in whole or in part, to their appropriate positions.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, in whole or in part, to their appropriate positions by requiring:

(A) the fiduciary to withhold an amount from at least one (1) future distribution to that beneficiary; or

(B) the beneficiary to return some or all of the distribution to the trust.

(3) To the extent the court is unable, after applying subdivisions (1) and (2), to restore the beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court shall require the fiduciary to pay an appropriate amount to:

(A) at least one (1) of the beneficiaries;

(B) the trust; or

(C) entities under both clauses (A) and (B).

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise of a discretionary power by the fiduciary will result in an abuse of the fiduciary's discretion. The petition shall:

(1) describe the proposed exercise or nonexercise of the power;

(2) contain sufficient information to inform the beneficiaries of:

(A) the reasons for the proposal; and

(B) the facts upon which the fiduciary relies; and

(3) contain an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power.

(e) A beneficiary who challenges a fiduciary's proposed decision or actual decision to exercise or not to exercise a discretionary power conferred by this chapter shall have the burden of establishing that it will result or did result in an abuse of discretion.".

Page 8, line 26, delete "16" and insert "**18**".
Page 8, line 31, delete "18" and insert "**20**".
Page 8, line 31, delete "41" and insert "**43**".
Page 8, line 38, delete "18" and insert "**20**".
Page 8, line 38, delete "41" and insert "**43**".
Page 9, line 32, delete "17" and insert "**19**".
Page 9, line 40, delete "36" and insert "**38**".
Page 9, line 40, delete "37" and insert "**39**".
Page 10, line 14, delete "17" and insert "**19**".
Page 10, line 14, delete "16(4)" and insert "**18(4)**".
Page 11, line 11, delete "18" and insert "**20**".
Page 11, line 34, delete "19" and insert "**21**".
Page 11, line 35, delete "16(1)" and insert "**18(1)**".
Page 12, line 11, delete "21" and insert "**23**".
Page 12, line 20, delete "20" and insert "**22**".
Page 12, line 40, delete "21" and insert "**23**".
Page 13, line 3, delete "22" and insert "**24**".
Page 13, line 5, delete "23" and insert "**25**".
Page 13, line 7, delete "35" and insert "**37**".
Page 14, line 2, delete "22" and insert "**24**".
Page 14, line 10, delete "21" and insert "**23**".
Page 14, line 10, delete "35" and insert "**37**".
Page 14, line 12, delete "23" and insert "**25**".
Page 15, line 1, delete "34" and insert "**36**".
Page 15, line 2, delete "24" and insert "**26**".
Page 15, line 12, delete "21" and insert "**23**".
Page 15, line 12, delete "35" and insert "**37**".
Page 15, line 15, delete "37(a)(7)" and insert "**39(a)(7)**".
Page 15, line 25, delete "28" and insert "**30**".
Page 15, line 25, delete "35" and insert "**37**".
Page 15, line 27, delete "25" and insert **27**".
Page 15, line 37, delete "26" and insert "**28**".
Page 16, between lines 8 and 9, begin a new paragraph and insert:

"**(c) Notwithstanding any other provision of this section, when an obligation described in this section is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of acquisition**

by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.".

Page 16, line 9, delete "(c)" and insert "**(d)**".

Page 16, line 10, delete "29, 30, 31, 32, 34, or 35" and insert "**31, 32, 33, 34, 36, or 37**".

Page 16, line 11, delete "27" and insert "**29**".

Page 16, line 21, delete "23" and insert "**25**".

Page 16, line 23, delete "29" and insert "**31**".

Page 16, line 25, delete "28" and insert "**30**".

Page 16, line 26, delete " 29, 30, 31, 32, or 35" and insert "**31, 32, 33, 34, or 37**".

Page 16, line 41, delete "29" and insert "**31**".

Page 16, line 42, delete "30" and insert "**32**".

Page 17, line 4, after "payments" insert "**, regardless of whether the trustee also has the option to receive the amount in a lump sum or other form of payment**".

Page 17, between lines 15 and 16, begin a new paragraph and insert:

"**(d) If a payment is not characterized as interest or a dividend, and if the payment is made from an individual account corresponding to an original participant, the payment shall be allocated between income and principal by:**

(1) determining the income occurring within the individual account by treating the account as though it were a trust; and

(2) considering the income to be distributed as a pro rata portion of all payments made from the individual account during the year.".

Page 17, line 16, delete "(d)" and insert "**(e)**".

Page 17, line 17, delete "or an equivalent payment," and insert "**or allocated under subsection (d),**".

Page 17, between lines 25 and 26, begin a new paragraph and insert:

"**(f) Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise**

receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.".

Page 17, line 26, delete "(e)" and insert "**(g)**".
Page 17, line 26, delete "an" and insert "**a gift or**".
Page 17, line 29, delete "marital".
Page 17, line 30, delete "30" and insert "**32**".
Page 17, line 38, delete "29" and insert "**31**".
Page 17, line 39, delete "31" and insert "**33**".
Page 17, line 40, delete "32" and insert "**34**".
Page 17, line 41, delete "34" and insert "**36**".
Page 17, line 42, delete "35" and insert "**37**".
Page 18, line 2, delete "38" and insert "**40**".
Page 18, line 5, delete "31" and insert "**33**".
Page 18, line 30, delete "July 1, 2002," and insert "**January 1, 2003,**".
Page 18, line 32, delete "July 1, 2002." and insert "**January 1, 2003.**".
Page 18, line 33, delete "June 30, 2002," and insert "**December 31, 2002,**".
Page 18, line 36, delete "32" and insert "**34**".
Page 19, line 21, delete "on July 1, 2002".
Page 19, line 24, delete "July 1, 2002." and insert "**January 1, 2003.**".
Page 19, line 25, delete "June 30, 2002," and insert "**December 31, 2002,**".
Page 19, line 28, delete "33" and insert "**35**".
Page 20, line 4, delete "34" and insert "**36**".
Page 20, line 13, delete "23" and insert "**25**".
Page 20, line 30, delete "35" and insert "**37**".
Page 20, line 37, delete "sections 21 or 29 of this chapter apply." and insert "**section 23 or section 31 of this chapter applies.**".
Page 21, line 9, delete "36" and insert "**38**".
Page 21, line 11, delete "16(2)(B)" and insert "**18(2)(B)**".
Page 21, line 11, delete "16(2)(C)" and insert "**18(2)(C)**".
Page 21, line 29, delete "37" and insert "**39**".
Page 21, line 32, delete "36(1)" and insert "**38(1)**".
Page 21, line 32, delete "36(2)" and insert "**38(2)**".
Page 21, line 41, delete "36(4)" and insert "**38(4)**".
Page 22, line 18, delete "38" and insert "**40**".

Page 22, line 31, delete "23" and insert "**25**".
Page 22, line 35, delete "39" and insert "**41**".
Page 23, line 13, delete "37(a)(7)" and insert "**39(a)(7)**".
Page 23, line 18, delete "40" and insert "**42**".
Page 23, line 36, delete "41" and insert "**43**".
Page 24, line 24, delete "42" and insert "**44**".
Page 27, line 4, delete "IC 30-2-14-18" and insert "**IC 30-2-14-20**".
Page 27, line 7, delete "IC 30-2-14-18" and insert "**IC 30-2-14-20**".
Page 27, line 14, delete "IC 30-2-14-16" and insert "**IC 30-2-14-18**".
Page 28, line 18, delete "IC 30-2-14-31" and insert "**IC 30-2-14-33**".
Page 28, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 9. IC 34-30-2-129.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.5. IC 30-2-14-15 (concerning a trustee's power to adjust trust principal and income).**

SECTION 10. IC 34-30-2-129.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.6. IC 30-2-14-16 (concerning a proposed action by a trustee of a trust).**".

Page 28, line 29, delete "July 1, 2002," and insert "**January 1, 2003,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 77 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 11, Nays 0.